

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	
	:	
v.	:	No.
	:	
PREFERRED HOME CARE OF NEW YORK,	:	
	:	
and	:	
	:	Board Case Nos.:
NAE EDISON LLC D/B/A EDISON HOME	:	29-CA-208111
HEALTH CARE,	:	29-CB-208114
	:	29-CA-210276
and	:	29-CB-210277
	:	
LOCAL 713, INTERNATIONAL BROTHERHOOD	:	
OF TRADE UNIONS	:	
	:	
Respondents	:	

JUDGMENT ENFORCING AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

THIS CAUSE was submitted upon the application of the National Labor Relations Board for entry of a consent judgment against Respondents, Preferred Home Care of New York, NAE Edison LLC d/b/a Edison Home Health Care, and Local 713, International Brotherhood of Trade Unions, their officers, agents, successors, assigns and representatives, enforcing its order dated June 14, 2018, in Case Nos. 29-CA-208111, 29-CB-208114, 29-CA-210276 and 29-CB-210277, and upon the record in that proceeding, certified and filed in this Court enforcing the order.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the Second Circuit that the order of the National Labor Relations Board be, and the same is hereby enforced; and that the Respondents, Preferred Home Care of New York, NAE Edison LLC d/b/a Edison Home Health Care, and Local 713, International Brotherhood of Trade Unions, their officers, agents, successors, assigns and representatives shall abide by and

perform the directions of the Board set forth in its order. (See Attached Order and Appendices)

Mandate shall issue forthwith

FOR THE COURT:

DATED:

NATIONAL LABOR RELATIONS BOARD

v.

PREFERRED HOME CARE OF NEW YORK,
NAE EDISON LLC D/B/A EDISON HOME HEALTH CARE, AND
LOCAL 713, INTERNATIONAL BROTHERHOOD OF TRADE UNIONS

ORDER

Respondent Local 713, International Brotherhood of Trade Unions, Garden City, New York, its officers, agents, and representatives, shall:

1. Cease and desist from restraining and coercing employees in the exercise of their Section 7 rights, including:
 - (a) Representing employees of Respondent Edison and Respondent Preferred for the purpose of collective bargaining, unless and until Respondent Local 713 has been certified by the National Labor Relations Board as the exclusive collective-bargaining representative of those employees.
 - (b) Accepting recognition from any employer, including Respondent Preferred and Respondent Edison, at a time when Respondent Local 713 does not represent an uncoerced majority of such employees in an appropriate unit.
 - (c) Executing or giving effect to a collective-bargaining agreement with any employer, including Respondent Preferred and Respondent Edison, including agreements containing a union security clause requiring membership in Respondent Local 713 as a condition of employment, at a time when Respondent Local 713 does not represent an uncoerced majority of such employees in an appropriate unit.
 - (d) Causing or attempting to cause any employer, including Respondent Edison or Respondent Preferred, to discriminate against any employees in regard to their hire or tenure of employment, or any term or condition of employment, in violation of Section 8(a)(3) of the Act, as amended, by conditioning employment on signing a Local 713 membership application.
 - (e) Any and all activity in furtherance of being or becoming the exclusive collective-bargaining representative of Respondent Edison's employees or of Respondent Preferred's employees, including enforcing collective-

- bargaining agreements, soliciting union authorization cards from Respondent Edison or Respondent Preferred employees, and discussing the benefits of membership in Local 713 with any of the Respondents' employees, for the six-month period following the Regional Director of Region 29's approval of this Stipulation.
- (f) Using any Local 713 International Brotherhood of Trade Unions membership cards, which were signed on or before the date that the Board approves this Stipulation, in an effort to seek certification by the National Labor Relations Board as the exclusive collective-bargaining representative of any Respondent Edison or Respondent Preferred employees for the purpose of collective bargaining.
 - (g) Seeking certification by the National Labor Relations Board as the exclusive representative of any Respondent Preferred or Respondent Edison employees for the purpose of collective bargaining for the six-month period following the Regional Director of Region 29's approval of this Stipulation.
 - (h) In any other manner restraining or coercing employees of Respondent Preferred, Respondent Edison, or any other employer in the exercise of their right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) After the Board approves this Stipulation, Region 29 will notify Respondent Local 713 of the amounts due. Within 14 days of notification from Region 29 of the amounts due, Respondent Local 713 shall print and deliver checks to Region 29 which reimburse all present and former employees for all dues, initiation fees, and other money paid by employees or withheld from employees pursuant to the April 2017 collective-bargaining agreements between Respondent Local 713 and Respondent Edison and Respondent Preferred. Respondent Local 713 shall also pay the interest on those reimbursements, pursuant to the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Region 29 will distribute the checks to the employees.

- (b) Accept Respondent Preferred's withdrawal of recognition of Respondent Local 713 as the exclusive collective-bargaining representative of Respondent Preferred's regular full-time and part-time home healthcare aides.
- (c) Accept Respondent Edison's withdrawal of recognition of Respondent Local 713 as the exclusive collective-bargaining representative of Respondent Edison's regular full-time and part-time home healthcare aides.
- (d) Within 14 days of service by the Region, post at its facility, located at 400 Garden City Plaza, Suite 106, Garden City, NY 11530, copies of the attached notices marked "Appendix A and C," in the languages that the Regional Director deems appropriate. Copies of the notices, on forms provided by Region 29, after being signed by Respondent Local 713's authorized representative, shall be posted by Respondent Local 713 and maintained for 60 consecutive days in conspicuous places, including all places where notices to members and employees are customarily posted. If Respondent Local 713 communicated with the employees of Respondent Preferred or Respondent Edison in any other manner, Respondent Local 713 will also send the notices to the employees in that manner.
- (e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Respondent Preferred, Brooklyn, New York, its officers, successors, agents, and assigns, shall:

1. Cease and desist from rendering assistance and support to Respondent Local 713, including:
 - (a) Recognizing Respondent Local 713 as the representative of any of its employees for the purpose of dealing with Respondent Preferred concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of employment, unless and until Respondent Local 713 has been certified by the National Labor Relations Board as the exclusive representative of those employees.
 - (b) Maintaining or giving any force or effect to any collective-bargaining agreement with Respondent Local 713, including any union security

- and/or dues check off provisions, unless and until Respondent Local 713 is duly certified by the Board as the exclusive collective-bargaining representative of a unit of Respondent Preferred's employees, *provided that* nothing in the Order shall permit the withdrawal or elimination of any wage increase or other benefits, terms, or conditions of employment which may have been established pursuant to the performance of that agreement and that the Ordered cessation shall be without prejudice to the insurance coverage provided in those agreements.
- (c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) To the extent not already provided to the Region or to Respondent Local 713, within 14 days of signing this Stipulation, Respondent Preferred shall provide payroll documents, dues remittance reports, and other information to the Regional Director of Region 29 and to Respondent Local 713 showing all union dues, initiation fees, and any other money Respondent Preferred deducted from its employees since July 1, 2017, pursuant to Respondent Preferred's collective-bargaining agreement with Respondent Local 713.
 - (b) Within 14 days of the Regional Director's approval of this Stipulation, Respondent Preferred shall provide a list to the Regional Director of Region 29 of the most current names, addresses, phone numbers, and social security numbers in Respondent Preferred's possession of all current and former employees receiving reimbursement of Local 713 dues and fees pursuant to this Stipulation. This list must be in a Microsoft Excel document.
 - (c) The parties agree that Respondent Local 713 is primarily liable for the reimbursement of Respondent Preferred's employees for dues, initiation fees, and other money the employees paid pursuant to the collective-bargaining agreement. Respondent Preferred assumes joint and several liability for making the employees whole, including daily compounded

interest, only after Respondent Local 713 defaults on this agreement. As described in this Stipulation, Respondent Local 713 must make the employees whole within 14 days of notice from Region 29 of the amounts due. If Respondent Local 713 does not meet that 14-day deadline, Region 29 will send an additional notice to Respondent Local 713, informing Respondent Local 713 of its failure to pay and demanding payment to the employees. Respondent Local 713 will be in default, and Respondent Preferred will assume joint and several liability, only if Respondent Local 713 fails to pay within 21 days of receiving that additional notice from Region 29.

- (d) Withdraw all recognition from Respondent Local 713 as representative of any of its employees for the purpose of dealing with Respondent Preferred with respect to grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment.
- (e) Within 7 days of the Regional Director's approval of this agreement, Respondent Preferred shall post an audio notice for all employees to hear on the Santrax telephone call-in system. The notice will be in the same languages with which the Santrax system communicates to Respondent Preferred's employees. The contents of the notice will be, translated appropriately, "Attention employees: Local 713 is no longer your union. All employees will receive a letter in the mail soon with more information." The notice will remain on the Santrax system for no less than two weeks.
- (f) Within 14 days of service by the Region, post at all of its New York City facilities copies of the attached notices marked "Appendix A" and "Appendix B." Copies of the notices, on forms provided by Region 29, after being signed by Respondent Preferred's authorized representative and Respondent Local 713's authorized representative, respectively, shall be posted by Respondent Preferred and maintained for 60 consecutive days in conspicuous places, including every room where Respondent Preferred conducts an in-service training for the 60 days following service by the Region. In addition to physical posting of paper notices, Respondent Preferred shall duplicate and mail, at its own expense, a copy of the notices marked "Appendix A" and "Appendix B" to all current employees and former employees employed by Respondent Preferred at any time since July 1, 2017. Respondent Preferred will take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. Respondent Preferred agrees to post and mail notices

translated by the Region in all languages deemed appropriate by the Regional Director.

- (g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Preferred has taken to comply.

Respondent Edison, Brooklyn, New York, its officers, successors, agents, and assigns, shall:

1. Cease and desist from rendering assistance and support to Respondent Local 713, including:
 - (a) Recognizing Respondent Local 713 as the representative of any of its employees for the purpose of dealing with Respondent Edison concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of employment.
 - (b) Maintaining or giving any force or effect to any collective-bargaining agreement with Respondent Local 713, including any union security and/or dues check off provisions, unless and until Respondent Local 713 is duly certified by the Board as the exclusive collective-bargaining representative of a unit of Respondent Edison's employees, *provided that* nothing in the Order shall permit the withdrawal or elimination of any wage increase or other benefits, terms, or conditions of employment which may have been established pursuant to the performance of that agreement and that the Ordered cessation shall be without prejudice to the insurance coverage provided in those agreements.
 - (c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist any labor organization, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) To the extent not already provided to the Region or to Respondent Local 713, within 14 days of signing this Stipulation, Respondent Edison shall provide payroll documents, dues remittance reports, and other

- information to the Regional Director of Region 29 and to Respondent Local 713 showing all union dues, initiation fees, and any other money Respondent Edison deducted from its employees since July 1, 2017, pursuant to Respondent Edison's collective-bargaining agreement with Respondent Local 713.
- (b) Within 14 days of the Regional Director's approval of this Stipulation, Respondent Edison shall provide a list to the Regional Director of Region 29 of the most current names, addresses, phone numbers, and social security numbers in Respondent Edison's possession of all current and former employees receiving reimbursement of Local 713 dues and fees pursuant to this Stipulation. This list must be in a Microsoft Excel document.
 - (c) The parties agree that Respondent Local 713 is primarily liable for the reimbursement of Respondent Edison's employees for dues, initiation fees, and other money the employees paid pursuant to the collective-bargaining agreement. Respondent Edison assumes joint and several liability for making the employees whole, including daily compounded interest, only after Respondent Local 713 defaults on this agreement. As described in this Stipulation, Respondent Local 713 must make the employees whole within 14 days of notice from Region 29 of the amounts due. If Respondent Local 713 does not meet that 14-day deadline, Region 29 will send an additional notice to Respondent Local 713, informing Respondent Local 713 of its failure to pay and demanding payment to the employees. Respondent Local 713 will be in default, and Respondent Edison will assume joint and several liability, only if Respondent Local 713 fails to pay within 21 days of receiving that additional notice from Region 29.
 - (d) Withdraw all recognition from Respondent Local 713 as representative of any of its employees for the purpose of dealing with Respondent Edison with respect to grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, unless and until Respondent Local 713 has been certified by the National Labor Relations Board as such representative.
 - (e) Within 7 days of the Regional Director's approval of this agreement, Respondent Edison shall post an audio notice for all employees to hear on the Santrax telephone call-in system. The notice will be in the same languages with which the Santrax system communicates to Respondent

Edison's employees. The contents of the notice will be, translated appropriately, "Attention employees: Local 713 is no longer your union. All employees will receive a letter in the mail soon with more information." The notice will remain on the Santrax system for no less than two weeks.

- (f) Within 14 days of service by the Region, post at all of its New York City facilities copies of the attached notices marked "Appendix C" and "Appendix D." Copies of the notices, on forms provided by Region 29, after being signed by Respondent Edison's authorized representative and Respondent Local 713's authorized representative, respectively, shall be posted by Respondent Edison and maintained for 60 consecutive days in conspicuous places, including every room where Respondent Edison conducts an in-service training for the 60 days following service by the Region. In addition to physical posting of paper notices, Respondent Edison shall duplicate and mail, at its own expense, a copy of the notices marked "Appendix C" and "Appendix D" to all current employees and former employees employed by Respondent Edison at any time since July 1, 2017. Respondent Edison will take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. Respondent Edison agrees to post and mail notices translated by the Region in all languages deemed appropriate by the Regional Director.
- (g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Edison has taken to comply.

APPENDIX A – Local 713 Notice for Preferred Employees

NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER
AND A CONSENT JUDGMENT OF ANY APPROPRIATE
UNITED STATES COURT OF APPEALS**

Local 713 is No Longer Your Union at Preferred

Based on unfair labor practice charges filed by 1199SEIU, the National Labor Relations Board and 1199SEIU entered into a settlement agreement with Preferred Home Care of New York and Local 713, International Brotherhood of Trade Unions. In that agreement, Preferred and Local 713 agreed that Preferred no longer recognizes Local 713 as the union representing Preferred's home health aides. The collective-bargaining agreement Local 713 and Preferred signed is no longer in effect. Preferred will no longer take Local 713 union dues out of your paycheck. Pursuant to that agreement, Local 713 states:

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with your employer on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL STOP enforcing our collective-bargaining agreement with Preferred.

WE WILL NOT charge you union dues or other fees under our collective-bargaining agreement with Preferred.

WE WILL NOT accept recognition as your union from Preferred or any other employer at a time when we do not represent an uncoerced majority of employees in an appropriate unit.

WE WILL NOT sign a collective-bargaining agreement with Preferred or any other employer if we do not represent an uncoerced majority of employees in an appropriate unit.

WE WILL reimburse you all union dues and other fees you paid under Local 713's contract with Preferred.

WE WILL accept Preferred's withdrawal of recognition of Local 713 as the union representing Preferred's home health aides, unless and until the National Labor Relations Board certifies Local 713 to be your union.

**LOCAL 713, INTERNATIONAL
BROTHERHOOD OF TRADE UNIONS**

The Board's decision can be found at www.nlr.gov/case/29-CA-208111 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX B – Preferred Notice

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER
AND A CONSENT JUDGMENT OF ANY APPROPRIATE
UNITED STATES COURT OF APPEALS**

Local 713 is No Longer Your Union at Preferred

Based on unfair labor practice charges filed by 1199SEIU, the National Labor Relations Board and 1199SEIU entered into a settlement agreement with Preferred Home Care of New York and Local 713, International Brotherhood of Trade Unions. In that agreement, Preferred and Local 713 agreed that Preferred no longer recognizes Local 713 as the union representing Preferred's home health aides. The collective-bargaining agreement Local 713 and Preferred signed is no longer in effect. Preferred will no longer take Local 713 union dues out of your paycheck. Pursuant to that agreement, Preferred states:

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT recognize Local 713 as your union unless and until the National Labor Relations Board certifies Local 713 to be your union.

WE WILL NOT deduct union dues and fees from your wages and send that money to Local 713 pursuant to our collective-bargaining agreement with Local 713.

WE WILL NOT in any other way give effect to our collective-bargaining agreement with Local 713.

WE WILL NOT recognize Local 713 or any other union at a time when that union does not represent an uncoerced majority of employees in an appropriate unit.

WE WILL NOT sign a collective-bargaining agreement with Local 713 or any other union if that union does not represent an uncoerced majority of employees in an appropriate unit.

WE WILL withdraw recognition of Local 713 as the union representing Preferred's home health aides for the purpose of collective bargaining.

PREFERRED HOME CARE OF NEW YORK

The Board's decision can be found at www.nlr.gov/case/29-CA-208111 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX C – Local 713 Notice for Edison Employees

**NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER
AND A CONSENT JUDGMENT OF ANY APPROPRIATE
UNITED STATES COURT OF APPEALS**

Local 713 is No Longer Your Union at Edison

Based on unfair labor practice charges filed by 1199SEIU, the National Labor Relations Board and 1199SEIU entered into a settlement agreement with Edison Home Health Care of New York and Local 713, International Brotherhood of Trade Unions. In that agreement, Edison and Local 713 agreed that Edison no longer recognizes Local 713 as the union representing Edison's home health aides. The collective-bargaining agreement Local 713 and Edison signed is no longer in effect. Edison will no longer take Local 713 union dues out of your paycheck. Pursuant to that agreement, Local 713 states:

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union

Choose a representative to bargain with your employer on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL STOP enforcing our collective-bargaining agreement with Edison.

WE WILL NOT charge you union dues or other fees under our collective-bargaining agreement with Edison.

WE WILL NOT accept recognition as your union from Edison or any other employer at a time when we do not represent an uncoerced majority of employees in an appropriate unit.

WE WILL NOT sign a collective-bargaining agreement with Edison or any other employer if we do not represent an uncoerced majority of employees in an appropriate unit.

WE WILL reimburse you all union dues and other fees you paid under Local 713's contract with Edison.

WE WILL accept Edison's withdrawal of recognition of Local 713 as the union representing Edison's home health aides, unless and until the National Labor Relations Board certifies Local 713 to be your union.

**LOCAL 713, INTERNATIONAL
BROTHERHOOD OF TRADE UNIONS**

The Board's decision can be found at www.nlrb.gov/case/29-CA-208111 or by using the QR code below.

Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half St., S.E., Washington, D.C. 20570, or by calling (202) 273-1940.